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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MANUEL CRUZ MIRANDA, Defendant and Appellant.	B200973 (Los Angeles County Super. Ct. No. BA239052)

APPEAL from a judgment of the Superior Court of Los Angeles County, William R. Pounders, Judge. Affirmed.

John Doyle, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan D. Martynec and Jason Tran, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Manuel Cruz Miranda appeals from the judgment entered following a jury trial that resulted in his convictions for attempted murder and assault with a semiautomatic firearm. Miranda was sentenced to 30 years to life in prison. He contends the trial court erred by admitting certain items of evidence. We discern no reversible error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

Cristanta Arias is Miranda's ex-wife, and they had seven children together. They separated in 1996 or 1997. In September 2002, Arias was living with her boyfriend, Orfanel T.,[1] and her nine children in a Los Angeles apartment. Debra Boloix was their neighbor. Although Miranda sometimes met his children by Arias outside the gated apartment complex, Arias had no other communication with him.

On September 29, 2002, Miranda took some of his children by Arias to a nearby park. There he encountered Boloix, whom he knew slightly, with her children. Miranda showed Boloix a handgun wrapped in a towel and offered to sell it to her, but she declined the offer. She assisted Miranda in pawning some jewelry. Miranda purchased some beer with the proceeds. Boloix allowed Miranda into the gated apartment complex, where the two drank the beer in Boloix's apartment. Miranda left after approximately one hour; he appeared relaxed and "normal."

Approximately 15 minutes later, Arias and Orfanel were escorting Orfanel's friend, Benito Hernandez, along with Hernandez's wife and infant daughter, from the apartment complex to their car. Miranda suddenly appeared and asked Orfanel, " 'What's up faggot.' " Miranda pistol-whipped Orfanel's face and stated, " 'You're going to die, son of a bitch.' " Miranda pointed the gun at Hernandez and threatened to kill him if he moved. Orfanel tried to grab the gun. Miranda fired approximately five rounds at Orfanel. Orfanel ran, with Miranda in pursuit, still firing at him. When

[1] Orfanel's last name was not disclosed at trial, and he was referred to only as "Orfanel T."

Miranda's gun ran out of ammunition, he reloaded and fired five or six additional shots as Orfanel fled.

Orfanel managed to escape to a nearby market, and Miranda discontinued his pursuit. An ambulance was summoned. Orfanel was treated for multiple gunshot wounds, i.e., one to each cheek, two to his right arm, and two to his upper left torso. He remained in a hospital for four days.

Immediately after the shooting began, Arias ran back into the apartment. Boloix saw Arias running, yelling, and screaming in the courtyard. Arias was "hysterical" and told Boloix that Orfanel had been shot.

Arias was interviewed by police immediately after the shooting. She informed them that Miranda had shot Orfanel, and identified Miranda using photographs in her home, which she provided to police. At trial, Hernandez and Arias both identified Miranda as the perpetrator.[2]

Two .25-caliber bullet casings were found at the crime scene.

2. *Procedure.*

Trial was by jury. Miranda was convicted of attempted murder (Pen. Code, §§ 664, 187, subd. (a))[3] and assault with a semiautomatic firearm (§ 245, subd. (b)). The jury found Miranda personally and intentionally used and discharged a handgun, proximately causing great bodily injury to Orfanel T. (§§ 12022.53, subds. (b), (c), (d), 12022.5, 12022.7, subd. (a).) The trial court sentenced Miranda to a term of 30 years to life in prison. It imposed a restitution fine, a suspended parole restitution fine, and a court security fee. Miranda appeals.

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[2] Hernandez did not identify Miranda as the shooter from a pretrial six-pack photographic lineup.

[3] All further undesignated statutory references are to the Penal Code.

DISCUSSION

1. *The trial court did not prejudicially err by admitting a photograph of Miranda in possession of six firearms.*

a. *Additional facts.*

During the People's direct examination of Arias, the prosecutor asked, "Before that date of September 29th, 2002, had you seen the defendant with guns?" Arias responded negatively. The prosecutor then asked for a sidebar conference, at which she indicated she wished to introduce a photograph of Miranda that Arias had given police shortly after the shooting. The photograph depicted Miranda wearing gloves and holding a gun in each hand, pointed toward the ceiling, with four more guns in his waistband and pocket. The prosecutor argued the photograph was relevant for two reasons: first, to impeach Arias's testimony that she had not seen Miranda with a gun prior to the date of the shooting; and second, because Miranda's possession of guns related to a prior incident of domestic violence perpetrated by him against Arias.

Defense counsel responded that the challenged photograph lacked any probative value and was unduly prejudicial. While Arias had used it to identify Miranda to police, Arias had also identified Miranda in three other photographs, making the challenged photograph superfluous. Further, according to defense counsel, there was no issue that Miranda had knowledge of and access to guns, since Boloix, Hernandez, and Arias had testified that he had a gun on the date of the shooting.

After hearing argument, the trial court ruled the photograph was admissible. It reasoned that there was little danger of prejudice, because possession of a weapon is not, by itself, illegal. The only possible prejudice, which the court viewed as minimal, came from Miranda's manner of holding the weapons in the photograph while wearing gloves. On the other hand, the court found the photograph highly probative because Arias had used it to identify Miranda, and it demonstrated Miranda's access to, and familiarity with, firearms. The trial court ruled any evidence regarding domestic violence was inadmissible.

The prosecutor then elicited from Arias that the photograph depicted Miranda. The photograph was subsequently received into evidence.

b. *Discussion.*

Miranda argues the challenged photograph should have been excluded as unduly prejudicial under Evidence Code section 352. He contends it depicted him as "a violent madman," but had no probative value because the defense did not intend to challenge evidence that he possessed a gun on the date of the shooting.

"Except as otherwise provided by statute, all relevant evidence is admissible." (Evid. Code, § 351; *People v. Zambrano* (2007) 41 Cal.4th 1082, 1149, disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Relevant evidence includes all evidence having any tendency in reason to prove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210; *People v. Zambrano, supra,* at p. 1149; *People v. Williams* (2008) 43 Cal.4th 584, 633-634; *People v. Wilson* (2006) 38 Cal.4th 1237, 1245.) Evidence is substantially more prejudicial than probative under Evidence Code section 352 if it "poses an intolerable 'risk to the fairness of the proceedings or the reliability of the outcome' [citation]." (*People v. Waidla* (2000) 22 Cal.4th 690, 724.)

An appellate court applies the abuse of discretion standard to any ruling by a trial court on the admissibility of the evidence, including a ruling on an Evidence Code section 352 objection. (*People v. Cox* (2003) 30 Cal.4th 916, 955, disapproved on other grounds in *People v. Doolin, supra,* 45 Cal.4th at p. 421, fn. 22; *People v. Waidla, supra,* 22 Cal.4th at p. 724.) The court's exercise of its discretion will not be disturbed on appeal unless the probative value of the evidence is clearly outweighed by its prejudicial effect. (*People v. Howard* (2008) 42 Cal.4th 1000, 1023.)

In *People v. Riser*, the defendant murdered two people during a robbery, using a Smith and Wesson .38-caliber Special revolver. The gun was never recovered. (*People v. Riser* (1956) 47 Cal.2d 566, 573, overruled on another ground in *People v. Morse* (1964) 60 Cal.2d 631, 637, fn. 2, 648-649.) When arrested, Riser was found with a Colt .38-caliber revolver, which could not have been the murder weapon, as well as various

holsters and ammunition. The California Supreme Court "stated the rule of admissibility as follows: 'When the specific type of weapon used to commit a homicide is not known, it may be permissible to admit into evidence weapons found in the defendant's possession some time after the crime that could have been the weapons employed. There need be no conclusive demonstration that the weapon in defendant's possession was the murder weapon. [Citations.] When the prosecution relies, however, on a specific type of weapon, it is error to admit evidence that other weapons were found in his possession, for such evidence tends to show, not that he committed the crime, but only that he is the sort of person who carries deadly weapons. [Citations.]' [Citation.]" (*People v. Cox, supra,* 30 Cal.4th at pp. 955-956, quoting *People v. Riser, supra,* at p. 577.) Because the murder weapon was known, *Riser* held that admission of the Colt .38-caliber revolver was error, but was not prejudicial. (*People v. Riser, supra,* at p. 577.)

Since *Riser,* courts have reiterated that evidence a defendant possessed weapons not used in the commission of the offense is inadmissible where its only relevance is to show the defendant is the type of person who surrounds himself with weapons, "a fact of *no relevant* consequence to determination of the guilt or innocence of the defendant." (*People v. Henderson* (1976) 58 Cal.App.3d 349, 360; *People v. Archer* (2000) 82 Cal.App.4th 1380, 1392-1393; see generally *People v. Jablonski* (2006) 37 Cal.4th 774, 822.) Conversely, evidence of the defendant's possession of weapons is admissible when probative on issues other than the defendant's propensity to possess weapons. (*People v. Cox, supra,* 30 Cal.4th at p. 956 ["when weapons are otherwise relevant to the crime's commission, but are not the actual murder weapon, they may still be admissible"]; *People v. Smith* (2003) 30 Cal.4th 581, 614 ["although the ammunition and derringer were not used in the killing, '[t]heir circumstantial relevancy . . . seems clear,' " and they were properly admitted]; *People v. Gunder* (2007) 151 Cal.App.4th 412, 416.)

Applying these principles here, we discern no abuse of discretion. Preliminarily, we observe that although the photograph was probative because it was used by Arias to identify Miranda to police, it was cumulative on this point. Three additional photographs were used for the same purpose. The record does not demonstrate that the challenged

photograph was superior to the other photographs in this regard. Thus, the challenged photograph was cumulative if offered only for this purpose.

However, this was not the only basis upon which the photograph was admitted. The gun used to shoot Orfanel was never recovered by police. Although two shell casings were discovered at the scene, they were not matched to any gun. It could not have been certain that the casings were related to the shooting of Orfanel, especially as far more than two shots were fired but only two casings were found. Thus, the specific type of weapon used to commit the shooting was not known and it was permissible, subject to the dictates of Evidence Code section 352, to admit evidence of other weapons in the defendant's possession that could have been used to commit the crime. (*People v. Riser*, *supra*, 47 Cal.2d at p. 577.) Presumably, any of the handguns depicted in the challenged photograph could have been the weapon used against Orfanel. While *Riser* concerned a gun, ammunition, and holsters found in the defendant's possession after, rather than before, the crime, we view this distinction as of little moment. The salient point is that the evidence showed Miranda possessed weapons which could have been used to commit the crime.

Admittedly, the probative value of the evidence was reduced because the People failed to establish how long before the shooting the photograph was taken. Arias testified that she and Miranda separated in 1996 or 1997, and the photograph was taken after they ended their relationship. Therefore, the photograph was taken between 1996 and 2002. Evidence that Miranda possessed guns in 1996 would have had far less probative value than evidence that he possessed guns shortly before the shooting.

However, as the trial court found, the photograph was not particularly prejudicial. We reject Miranda's characterization that the photograph suggested he was a "violent madman." There was no showing the guns in the photograph were possessed illegally. Miranda was not depicted pointing the weapons at someone. We decline to hold the mere fact an individual is photographed with firearms indicates to a jury that he is violent and dangerous. Balancing the probative value of the photograph against its potential for prejudice, we cannot say the trial court abused its discretion.

Even assuming arguendo that the photograph was admitted in error, we discern no prejudice. The erroneous admission of evidence requires reversal only if it is reasonably probable that appellant would have obtained a more favorable result had the evidence been excluded. (Evid. Code, § 353, subd. (b); *People v. Richardson* (2008) 43 Cal.4th 959, 1001; *People v. Earp* (1999) 20 Cal.4th 826, 878; *People v. Avitia* (2005) 127 Cal.App.4th 185, 194.) No such reasonable probability exists here. The evidence Miranda shot at, and intended to kill, Orfanel T. was overwhelming. Two eyewitnesses saw the shooting. There was no chance Arias misidentified Miranda; she had been married to him for 11 years and had borne him seven children. A police officer observed blood spatter on a wall and a blood trail on the sidewalk where the shooting had occurred. Hernandez saw Orfanel's chest wounds. A treating physician described the location and nature of Orfanel's wounds. A third witness, Boloix, testified that Miranda was in possession of a gun shortly before the shooting. (See *People v. Riser, supra*, 47 Cal.2d at pp. 577-578 [erroneous admission of weapon was harmless error where properly admitted evidence demonstrated the defendant possessed firearms].) In short, there is no likelihood the jury would have rendered a more favorable result for Miranda had the challenged evidence been excluded. (See *People v. Jablonski, supra*, 37 Cal.4th at pp. 822-823 [even if admission of evidence that defendant possessed a stun gun was erroneous, it was harmless, given the overwhelming evidence of defendant's guilt].)

Miranda's citation to *McKinney v. Rees* (9th Cir. 1993) 993 F.2d 1378, does not assist him. In *McKinney,* the defendant was accused of killing his mother by slitting her throat with a knife. The murder weapon was not identified, and almost any knife could have been used to commit the crime. The prosecution presented evidence that the defendant had a fascination with knives, possessed a knife collection, occasionally strapped a knife to his body while wearing camouflage pants, and once used a knife to scratch the words " 'Death is His' " on a dormitory closet door. (*Id.* at pp. 1381-1382.) The Ninth Circuit concluded most of this evidence was relevant only to show the defendant was the type of person who would carry knives, and was therefore

impermissible character evidence. Admission of the evidence, *McKinney* concluded, rendered the trial fundamentally unfair. (*Id.* at pp. 1383-1385.)

McKinney does not compel a conclusion that the trial court in the instant case abused its discretion. We are not bound by the rulings of the lower federal courts. (*People v. Cleveland* (2001) 25 Cal.4th 466, 480; *People v. Weeks* (2008) 165 Cal.App.4th 882, 888.) *McKinney* is, in any event, distinguishable. The single photograph admitted here was clearly far less prejudicial than the extensive knife evidence presented in *McKinney*. For the reasons set forth *ante*, we conclude that even if the photograph was admitted in error, it was harmless.

2. *The trial court did not prejudicially err by allowing evidence of Orfanel T.'s birthdate.*

a. *Additional facts.*

Orfanel T. did not testify, and for reasons not made clear in the record, his last name was not used at trial. In order to show Orfanel was the individual treated in the emergency room, the People sought to introduce evidence of Orfanel's date of birth. Over a defense objection, the prosecutor elicited from the treating emergency room physician, Dr. Jeremy Kroes, that on September 29, 2002, he had treated a gunshot victim named Orfanel T. with a date of birth of July 27, 1975.

During direct examination of Detective Juan Parga, the prosecutor elicited that Parga had spoken with Orfanel T., and had determined Orfanel's date of birth. After defense counsel objected, the parties conducted a hearing out of the presence of the jury. The prosecutor urged that the evidence was admissible under Evidence Code section 1310, subdivision (a), the hearsay exception for statements concerning a declarant's own family history. The trial court agreed that the exception applied as long as Orfanel was unavailable within the meaning of Evidence Code section 240. Accordingly, it conducted an Evidence Code section 402 hearing to determine whether the People had employed diligent efforts to obtain Orfanel's presence at trial.

The prosecutor's comments during an earlier pretrial proceeding indicated that after the crime, Miranda absconded. Detective Parga testified that he had been assigned

to the case since its inception in 2002. In 2006, Parga was informed that Miranda had been arrested on an unrelated matter. Parga at that point resumed his investigation of the Orfanel T. shooting. A preliminary hearing was held in August 2006.

In 2006, prior to trial, Parga contacted Arias, who stated that based upon information provided by her mother, she believed Orfanel T. was in Acapulco, Mexico. Arias's mother and Orfanel's family lived in the same town in Mexico. Parga attempted to obtain information regarding "specifically where in Acapulco" Orfanel's family lived, but Arias could not or would not supply that information. Parga did not attempt to contact anyone in Acapulco to find Orfanel.

Parga checked "multiple data bases" to acquire information on Orfanel. He performed a computerized search to determine whether Orfanel was in custody or had traffic tickets in California. Parga also checked Orfanel's "rap sheet" to see if he had been recently arrested. Parga checked internal police department field identification cards for Orfanel. Parga's efforts did not reveal any address for Orfanel other than the apartment where he had lived with Arias in 2002. Parga did not contact local hospitals because he knew hospitals would not provide him with information on patients.

During trial, and prior to the Evidence Code section 402 hearing, Parga discussed Orfanel's whereabouts with witness Hernandez. Hernandez confirmed that Orfanel was residing in Mexico. Hernandez also provided Parga with the name of one of Orfanel's relatives who resided in Los Angeles. The morning of the Evidence Code section 402 hearing, Parga spoke to that relative, who informed Parga that Orfanel was still in Mexico. Between the time the crime occurred and trial, Parga had never received any information indicating Orfanel was in the United States.

The trial court ruled that the People had established Orfanel was unavailable as a witness. Detective Parga thereafter testified Orfanel's date of birth was July 27, 1975.

b. *Discussion.*

Miranda urges that the trial court erred by allowing Dr. Kroes and Detective Parga to testify to Orfanel's date of birth, because the People failed to establish they had exercised reasonable diligence to obtain Orfanel's presence at trial. (Evid. Code, § 240,

subd. (a)(5).)[4] He asserts that admission of evidence of his birthdate therefore violated his Sixth Amendment confrontation rights. We disagree.

Evidence Code section 1310, subdivision (a) provides an exception to the hearsay rule for statements concerning the defendant's own family history. Subdivision (a) of that section provides, "evidence of a statement by a declarant who is unavailable as a witness concerning his own birth, marriage, divorce, a parent and child relationship, relationship by blood or marriage, race, ancestry, or other similar fact of his family history is not made inadmissible by the hearsay rule, even though the declarant had no means of acquiring personal knowledge of the matter declared," as long as the statement was not made under circumstances indicating untrustworthiness. Miranda does not challenge that Orfanel's statements to medical providers regarding his date of birth would fall within this exception, if unavailability was properly established.

To establish unavailability under Evidence Code section 240, the proponent of the evidence must show the declarant is absent from the hearing and that the proponent has exercised reasonable diligence (often referred to as "due diligence"), but has been unable to procure the witness's attendance by the court's process. (Evid. Code, § 240, subd. (a)(5); *People v. Wilson* (2005) 36 Cal.4th 309, 341; *People v. Smith, supra*, 30 Cal.4th at p. 609; *People v. Sanders* (1995) 11 Cal.4th 475, 522-523; *People v. Cummings* (1993) 4 Cal.4th 1233, 1296; *People v. Diaz* (2002) 95 Cal.App.4th 695, 705-706.) "Due diligence" is not susceptible to a mechanical definition, but " 'connotes persevering application, untiring efforts in good earnest, efforts of a substantial character.' " (*People v. Sanders, supra*, 11 Cal.4th at p. 523; *People v. Wilson, supra,* 36 Cal.4th at p. 341.) Whether due diligence is shown depends upon the totality of efforts used to locate the witness. (*People v. Sanders, supra,* at p. 523.) Relevant considerations include the character of the prosecution's efforts; whether the search was timely begun; the

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[4] Miranda also complains that the trial court made no finding that Orfanel was unavailable before admitting the physician's testimony about Orfanel's date of birth. However, given that the court ultimately conducted such a hearing and found Orfanel was unavailable, this contention is of little moment.

importance of the witness's testimony; whether leads were competently explored; whether the proponent of the evidence reasonably believed prior to trial that the witness would appear willingly and therefore did not subpoena the witness when he or she was available; and whether the witness would have been produced if reasonable diligence had been exercised. (*People v. Valencia* (2008) 43 Cal.4th 268, 292-293; *People v. Wilson, supra,* at p. 341; *People v. Cromer* (2001) 24 Cal.4th 889, 904; *People v. Sanders, supra,* at p. 523.)

A witness is also unavailable where he or she is absent from the hearing and the court is unable to compel the witness's attendance by its process. (Evid. Code, § 240, subd. (a)(4).) However, the fact a witness is not in California is not necessarily a sufficient basis for a finding of unavailability; prosecutorial authorities must still make a good-faith effort to obtain the witness's presence at trial. (*Barber v. Page* (1968) 390 U.S. 719, 723-725; *People v. Sandoval* (2001) 87 Cal.App.4th 1425, 1441.)

Whether a party exercised reasonable diligence to locate a missing witness is a mixed question of law and fact. (*People v. Cromer, supra,* 24 Cal.4th at pp. 900-901.) When, as here, the facts regarding the prosecution's efforts to locate the witness are undisputed, we evaluate the question of due diligence independently. (*People v. Valencia, supra,* 43 Cal.4th at p. 292; *People v. Smith, supra,* 30 Cal.4th at p. 610; *People v. Martinez* (2007) 154 Cal.App.4th 314, 323.)

Viewing the totality of the circumstances, we conclude the trial court properly found the People exercised reasonable diligence in attempting to locate Orfanel. The crime occurred in 2002. Miranda was not located until 2006. During the intervening years, Orfanel apparently returned to Acapulco, Mexico. The People can hardly have been expected to keep track of Orfanel when the perpetrator's whereabouts were unknown and no trial was pending. (See *People v. Wilson, supra,* 36 Cal.4th at p. 342 [" '[I]t is unclear what effective and reasonable controls the People could impose upon a witness who plans to leave the state, or simply "disappear," long before a trial date is set' "].)

Second, although Orfanel was the victim, his testimony was not particularly important at trial. (See *People v. Valencia, supra*, 43 Cal.4th at p. 293.) Unlike in the typical case, in which a victim's testimony is crucial to establish the elements of the crime, here two eyewitnesses observed the shooting and were in at least as good, if not a better, position as Orfanel to describe Miranda's actions. Both these witnesses testified at trial. The emergency room physician described Orfanel's wounds in detail. Eyewitness Hernandez also testified that he saw that some of the gunshots hit Orfanel in the shoulder. Hernandez recounted that after the shooting, Orfanel was "sitting down bleeding" and was "in bad shape." Orfanel's out-of-court statement concerned only a single piece of information: his birthdate. His birthdate was relevant only to establish that the individual whom Dr. Kroes treated was the same Orfanel T. who was shot by Miranda. There was no genuine dispute on this point. Thus, on the particular facts of this case, Orfanel's testimony was not of great importance.

Third, Parga undertook reasonable efforts to find Orfanel, including checking various California data bases. However, all information pointed to the conclusion that Orfanel was in Mexico. It would therefore have been futile for Parga to have undertaken further efforts to find Orfanel in California. The prosecution must make a good faith effort and exercise reasonable diligence to procure a witness's appearance, but it need not pursue futile acts not likely to produce the witness for trial. (*People v. Hovey* (1988) 44 Cal.3d 543, 562.)

Miranda's primary argument is that Parga should have contacted Mexican authorities to enlist their assistance in locating Orfanel. Relying on *People v. Sandoval, supra,* 87 Cal.App.4th 1425, Miranda points out that various treaties between the United States and Mexico provide for mutual cooperation in legal matters. (*Id.* at pp. 1438-1439.) *Sandoval* explained that one such treaty provides for a prosecutor in the United States to request that a witness in Mexico be compelled by Mexican authorities to appear and testify in Mexico. Another provision allows the prosecution to request the assistance of Mexican authorities to invite a person located in Mexico to come to California and testify. (*Id.* at p. 1439.)

Sandoval is distinguishable. There, witness Zavala, while in custody on drug charges, testified at the defendant's preliminary hearing. In exchange for his testimony, charges against him were dismissed. He was then deported to Mexico. (*People v. Sandoval*, *supra*, 87 Cal.App.4th at p. 1432.) A prosecution investigator later contacted Zavala in Mexico by telephone. Zavala stated he would be willing to testify if he could obtain a passport and visa to enter the United States legally, but he needed money to make the trip to Mexico City to apply for the visa, as well as money to travel to California. (*Ibid.*) The prosecution declined to financially assist Zavala and did nothing more to secure his attendance at trial. (*Ibid.*) On appeal, the court recognized that the trial court had no power to compel Zavala's appearance in person. (*Id.* at p. 1434.) However, the prosecution was still required to use good faith efforts to obtain the witness's presence at trial. In *Sandoval*, the prosecution's failure was prejudicial. Zavala was a "critical" witness and it was possible, perhaps likely, that he would have testified had authorities assisted him in returning to the United States. (*Id.* at pp. 1442-1444.)

Here, in contrast, Orfanel's testimony was far from crucial, as we have discussed. Further, in *Sandoval* the prosecution knew the witness's location in Mexico, had spoken to the witness, and had learned the witness wished to testify. In the instant case, the prosecution was never able to contact Orfanel in Mexico. Parga never obtained a meaningful lead on Orfanel's address in Acapulco because Arias would not or could not provide such information. Parga, therefore, had little information to provide to Mexican authorities. Under these circumstances, it is highly speculative to assume that Orfanel would have been produced for trial had Parga contacted Mexican authorities. " ' "That additional efforts might have been made or other lines of inquiry pursued does not affect this conclusion. [Citation.] It is enough that the People used reasonable efforts to locate the witness." [Citation.]' " (*People v. Valencia, supra,* 43 Cal.4th at p. 293; *People v. Wilson, supra,* 36 Cal.4th at p. 342.) " 'The law requires only reasonable efforts, not prescient perfection.' [Citations.]" (*People v. Diaz, supra,* 95 Cal.App.4th at p. 706.) In sum, given the lapse of time between the crime and the point at which Miranda was found and brought to trial, the insignificance of the evidence at issue, and the fact

Orfanel's address in Mexico was unknown, we conclude the trial court correctly found the People exercised due diligence.

Finally, even assuming for purposes of argument that the evidence of Orfanel's date of birth was admitted in error, it was harmless under any standard. (*People v. Watson* (1956) 46 Cal.2d 818, 837; *Chapman v. California* (1967) 386 U.S. 18, 24.) It is clear beyond a reasonable doubt that the jury would not have rendered a more favorable result for Miranda had the date of birth evidence been excluded. Hernandez's and Arias's testimony provided ample evidence Miranda shot at Orfanel and intended to kill him. These witnesses recounted how Miranda fired five shots at close range, chased Orfanel when he fled, reloaded, and continued firing at him. It is inconceivable that a reasonable jury would have found Miranda lacked the intent to kill on these facts.

Similarly, there was compelling evidence supporting the section 12022.53 firearm enhancements. Two eyewitnesses testified Miranda personally used and discharged a firearm. Hernandez testified that he saw that some of the gunshots had hit Orfanel in the shoulder. As noted *ante*, Hernandez recounted that after the shooting, Orfanel was "sitting down bleeding" and was "in bad shape." An officer testified to seeing blood spatter and a trail of blood in front of the apartment. This evidence overwhelmingly proved that Orfanel was hit by more than one shot in the shoulder, and was bleeding profusely. The evidence that Miranda inflicted great bodily injury was therefore overwhelming even absent the physician's testimony.

Finally, the physician testified that the individual he treated was named Orfanel. This testimony was not necessarily offered for the truth of the matter asserted, i.e., to prove that the patient's name was *actually* Orfanel. (See Evid. Code, § 1200 [hearsay is evidence of an out-of-court statement offered to prove the truth of the matter stated].) The jury could have readily inferred that the individual identifying himself as Orfanel at the hospital, suffering from gunshot wounds, and arriving at the hospital within the relevant time frame, was indeed the same Orfanel at whom Miranda shot. In sum, any purported error in admitting the testimony regarding Orfanel's birthdate was harmless.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.